

# **EXHIBIT 3**

TERRY PEMBERTON  
July 03, 2023

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JUSTIN GUY, individually and  
on behalf of those similarly  
situated,

Plaintiff,

vs.

Case No. 20-cv-12734-MAG-EAS

Hon. Mark A. Goldsmith

ABSOPURE WATER COMPANY, LLC,  
a domestic limited liability  
company,

Defendant.

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The Remote Deposition of TERRY PEMBERTON,  
Commencing at 2:01 p.m.,  
Monday, July 3, 2023,  
Before Helen F. Benhart, CSR-2614,  
Appearing remotely from Wayne County, Michigan.

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1    REMOTE APPEARANCES:	Page 2	1    Remote Proceedings	Page 4
2		2    Monday, July 3, 2023	
3    ANDREW R. FRISCH		3    2:01 p.m.	
4    Morgan & Morgan, P.A.		4                 THE REPORTER: The attorneys participating	
5    8151 Peters Road		5    in this deposition acknowledge that I am not	
6    Suite 4000		6    physically present in the deposition room. They	
7    Plantation, Florida 33324		7    further acknowledge that in lieu of an oath	
8    (954) 967-5377		8    administered in person, the witness will verbally	
9    afirsch@forthepeople.com		9    declare his testimony in this matter is under penalty	
10      Appearing on behalf of the Plaintiff.		10    of perjury. The parties and their counsel consent to	
11		11    this arrangement and waive any objections to this	
12      MICHAEL O. CUMMINGS		12    manner of reporting. Please indicate your agreement	
13    Cummings, McClorey, Davis & Acho, P.L.C.		13    by stating your name and your agreement on the record.	
14    1185 Avenue of the Americas		14                 MR. FRISCH: Andrew Frisch for the	
15    Third Floor		15    plaintiff and I agree.	
16    New York, New York 10036		16                 MR. CUMMINGS: Michael Cummings for	
17    (212) 547-8810		17    Defendant. Yes, I agree.	
18    mcummings@cmda-law.com		18                 TERRY PEMBERTON,	
19      Appearing on behalf of the Defendant.		19    Was thereupon called as a witness herein, and after	
20		20    having been first duly sworn to testify to the truth,	
21		21    the whole truth and nothing but the truth, was	
22		22    examined and testified as follows:	
23		23                 EXAMINATION	
24		24    BY MR. CUMMINGS:	
25		25    Q. Good afternoon, Mr. Pemberton. You're having your	
1                 TABLE OF CONTENTS	Page 3	1                 deposition taken which is part of a litigation court	Page 5
2		2    procedure. It's very similar to testifying in court.	
3    WITNESS	PAGE	3    There's a court reporter taking down what you say and	
4    TERRY PEMBERTON		4    will produce a transcript of that. First of all, have	
5		5    you ever had your deposition taken before?	
6    EXAMINATION		6    A. I have not, no.	
7    BY MR. CUMMINGS:	4	7    Q. Okay. So as I said, it's very much like court	
8    EXAMINATION		8    testimony. You're sworn in. You are under oath and	
9    BY MR. FRISCH:	32	9    you would be like you would in court subject --	
10    RE-EXAMINATION		10    potentially subject to penalties for perjury if you	
11    BY MR. CUMMINGS:	33	11    knowingly made a false statement. Do you understand	
12		12    that?	
13                 EXHIBITS		13    A. Yes.	
14		14    Q. Okay. Good. And so some basic ground rules. Please	
15    EXHIBIT	PAGE	15    continue as you're doing to say -- make verbal answers	
16    (Exhibit retained by Mr. Cummings.)		16    such as yes rather than nodding your head or something	
17		17    so that the court reporter can take down clearly what	
18    DEPOSITION EXHIBIT 1	29	18    you say. Do you understand that?	
19		19    A. Yes, I do.	
20		20    Q. Okay. And, also, as you've been doing, please wait	
21		21    for me to complete my question even if the answer	
22		22    seems quite obvious, again, so the court reporter can	
23		23    take it down and your attorney could have the	
24		24    opportunity to object if necessary. You understand	
25		25    that as well?	

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1 A.	Yes, I do.	
2 Q.	Where are you currently?	
3 A.	I'm in my home.	
4 Q.	Okay. Other than the computer you're taking this on, do you have any computing or communication devices with you?	
7 A.	No, no.	
8 Q.	Okay. And as I'm asking you questions, I would ask you not guess at the answer. If you don't know, feel free to say so. However, if you can give an approximation, please do so, about this time or about this long or whatever it may be. Do you understand that as well?	
14 A.	Yes, I do.	
15 Q.	Is there anything going on with you that might prevent you from giving full and complete answers, maybe on medication or some other distraction that would interfere with your answering questions?	
19 A.	No.	
20 Q.	Now, what is your understanding of the case and why you are participating?	
22 A.	My understanding is that it has -- I believe it has something to do with overtime payments at Absopure. Other than that, I can't give a clear answer.	
25 Q.	Do you recall the dates that you worked for Absopure?	
		Page 9
1 A.	Yes. It was late February to late June I believe.	
2 Q.	Of what year?	
3 A.	Of 2022.	
4 Q.	Okay. What was your position with Absopure when you worked there?	
6 A.	I was a driver.	
7 Q.	Okay. Could you please state your current address?	
8 A.	[REDACTED] Michigan.	
9 Q.	Were you living at that location at the time you worked for Absopure?	
11 A.	Yes.	
12 Q.	And what were your responsibilities as a driver for Absopure?	
14 A.	I would deliver product. That was -- I would -- like throughout the day? Do you want like a --	
16 Q.	Yeah. We'll go through more, just a general description would be fine now and we'll go through bit by bit.	
19 A.	Just in general it was driving and delivering the product to customers.	
21 Q.	Okay. Did you -- other than a general description of driver, did you have a specific title when you worked there?	
24 A.	Not that I'm aware of, unless it was driver. That's the only one I remember.	
1 A.	Right near the door, right when you walked into the second set of doors, there was a thing that you scan your ID up against right near the wall and that was the clock in thing.	
5 Q.	Okay. Did you do that every day when you began the workday?	
7 A.	Every day that I began my workday at the yard, yes.	
8 Q.	Okay. Just to confirm, you worked at Absopure's Plymouth facility, correct?	
10 A.	Yes.	
11 Q.	Okay. And then what did you do after you swiped your card after the clock in?	
13 A.	I would check my load sheet and my route for the day as well as grab my -- my handheld device. I can't remember what it's called, but my handheld device and checked through and make sure everything's correct and lined up with my paperwork.	
18 Q.	What was your load sheet?	
19 A.	It was -- it was just like a sheet that showed which bay had which product and along that line. I'm trying to word it. It was a sheet that showed on my -- on the truck where the product was on each thing or where it should be.	
24 Q.	And did you fill out the load sheet?	
25 A.	Yes.	

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1 Q.	And when did you fill out the load sheet?	1	item like a -- like water containers, like a 12-pack
2 A.	The day before, whenever -- either the day before or	2	water, smaller things like that, then we would have to
3	the Friday before if it's in the case of Mondays.	3	go into the warehouse and get it.
4 Q.	Okay. And you referred to a handheld device. What	4	About how often did this occur where there wasn't a
5	was that?	5	match-up?
6 A.	I'm not quite sure how to describe it. It's like a	6	I can't really recall. It was inconsistent.
7	little -- like a handheld thing bigger than a phone	7	Q. And you said you then drove up to the front. Where
8	with a keypad. A big bulky thing.	8	did you drive up to?
9 Q.	What kind of things did you do with the handheld?	9	A. Right in front of the office building. Yeah, right in
10 A.	So I would compare it to what is on my load sheet and	10	front of the main door, the same door that I went
11	make sure that the amount of each product like, for	11	into, walk in at.
12	example, distilled water, matched up with what was in	12	Q. And on your route did you have any coffee products
13	my handheld.	13	that you took with you?
14 Q.	Okay. And when did you do that comparison?	14	A. My route I usually did not.
15 A.	Just right before -- as soon as I get in, check the	15	Q. Okay. And at any time in the morning in this process
16	loads and then check the handheld and then right after	16	did you ever do any kind of safety inspection on your
17	that. Right after I looked at the handheld I would	17	truck?
18	compare the two.	18	A. Yeah. Right before I start the truck you do a
19 Q.	What did you do after making that comparison?	19	walk-around, check the engine and all that.
20 A.	I would go start my truck, and if I had any coolers or	20	Q. Okay. And about how long did that safety inspection
21	anything like that for the day, I would go grab those	21	take you?
22	and load them in the truck, then count and make sure	22	A. It would take me about five minutes, if that.
23	everything in the load sheet was also on the truck as	23	Q. And after you had met with the manager by the front
24	well.	24	office and confirmed the inventory on the truck, what
25 Q.	How often did you grab coolers to take with you?	25	happens then?
	Page 11		Page 13
1 A.	Generalizing, I'd say at least two times a week for me	1 A.	Then I'd be given the okay to go and I'd -- I'd
2	personally for my route.	2	usually go like right after that.
3 Q.	And typically how many coolers would that be?	3 Q.	Okay. When did you ever do anything that was called
4 A.	I'll generalize and say like two, two each time.	4	checking out or checkout?
5 Q.	Was there a maximum number that you would take?	5 A.	When the -- when I would talk to the manager, they
6 A.	If I remember correctly, the max I ever took was like	6	would check me out. They do it all in one. They walk
7	six in one day, if that.	7	around. They make sure it all matches, then they
8 Q.	Okay. As I recall, you just stated that you would	8	check me out on the thing, on the handheld.
9	compare what was on the -- you went back to your truck	9 Q.	By check me out on the thing, they would do something
10	and compared what was on the load sheet with what was	10	on the handheld?
11	on the truck, is that correct?	11 A.	Yeah. They would have to insert some passwords and
12 A.	Yes.	12	stuff to make sure I was good to go.
13 Q.	Then what did you do after that?	13 Q.	After that was done, what happened next?
14 A.	After that, assuming there were no mistakes with the	14 A.	That's when I would be done checking out and done for
15	things -- with things not being loaded or similar	15	my pretrip stuff basically and then I'd be on my way
16	issues, I'd drive up to the front, and a manager is	16	to my stops.
17	supposed to come and check and make sure that it all	17 Q.	Okay. Do you have a sense for how long generally it
18	lines up with the paperwork, the truck and the	18	took from the time that you clocked in until the time
19	handheld.	19	you were able to check out the truck?
20 Q.	And when you were back at -- first getting your truck	20 A.	Probably -- an estimate, I'll say around max 30
21	and it did not match up between the handheld and what	21	minutes, minimum 15, 20.
22	was on the truck, what would happen then?	22 Q.	Okay. Did you ever --
23 A.	We would have to drive into the warehouse and get the	23 A.	Assuming there was no errors on the load sheet or
24	attention of a forklift driver to make sure to bring	24	stuff wasn't loaded, you know, a situation like that.
25	the stuff that wasn't there or if it was a smaller	25 Q.	If there was some kind of error, how long might you --

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<p style="text-align: right;">Page 14</p> <p>1 it take you then or did it take you then?</p> <p>2 A. It depends on how many forklift drivers there are and</p> <p>3 how many other trucks had similar issues. Yeah, it</p> <p>4 all depends on that. I'd say the most I've waited was</p> <p>5 like 30 minutes in there would be about the maximum,</p> <p>6 minimum like five minutes, so it's a bit of a spread.</p> <p>7 Q. Okay. And you mentioned you weren't quite sure how</p> <p>8 often that happened. Did it happen more than once a</p> <p>9 week?</p> <p>10 A. It has happened more than once a week, but I have also</p> <p>11 gone more than two weeks without it happening. It was</p> <p>12 rather inconsistent.</p> <p>13 Q. I see. The route that you drove, did it have a name</p> <p>14 and a number?</p> <p>15 A. I assume it did. I wouldn't know what it was, though.</p> <p>16 Q. Either one, you don't recall a name or a number for</p> <p>17 the route?</p> <p>18 A. No. I just called it up north route.</p> <p>19 Q. I see. And by up north route, where did you go on</p> <p>20 your route?</p> <p>21 A. Furthest north I'd go is like Cheboygan, Petoskey, and</p> <p>22 usually my first stop, the most southern stop, would</p> <p>23 be Beaverton or Gladwin and anywhere between that</p> <p>24 would be Gaylord, Alpena, stuff like that.</p> <p>25 Q. Was yours an overnight route?</p>	<p style="text-align: right;">Page 16</p> <p>1 maybe -- how did you refer to each route?</p> <p>2 A. Mondays it was Saint Helen and Houghton Lake and back.</p> <p>3 Wednesday -- Tuesday, Wednesday Gaylord and Alpena,</p> <p>4 Thursday, Friday Petoskey and Cheboygan.</p> <p>5 Q. You said the Monday route. Was that an overnight</p> <p>6 route?</p> <p>7 A. Monday night was not overnight.</p> <p>8 Q. So how long did it take you from the time you left on</p> <p>9 your route to the time you got back to the facility?</p> <p>10 A. On Monday?</p> <p>11 Q. Yes, Monday.</p> <p>12 A. Monday I'd usually leave around six or -- I'd leave</p> <p>13 the facility around 6:30 and then I'd probably get</p> <p>14 back about four or five, around that time.</p> <p>15 Q. I see. Okay. And for the Tuesday, Wednesday route,</p> <p>16 how long did it typically take you to get to your</p> <p>17 first stop?</p> <p>18 A. No less than around three hours.</p> <p>19 Q. I see. After you got to your first stop, how long</p> <p>20 after that would it take you to complete the route for</p> <p>21 the day or complete what you would be driving for that</p> <p>22 day?</p> <p>23 A. Around eight hours from the first stop to when -- the</p> <p>24 stop at the hotel, about eight hours.</p> <p>25 Q. Were you able to make all the stops for that route on</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes, it was.</p> <p>2 Q. So please give me a brief description of how things,</p> <p>3 you know, went in your route including how long it</p> <p>4 took you.</p> <p>5 A. For my route, depending upon which one it was --</p> <p>6 MR. FRISCH: I'm going to object. It calls</p> <p>7 for a narrative and it's a compound question, but you</p> <p>8 can answer if you understand.</p> <p>9 THE WITNESS: So depending on which route</p> <p>10 it was, it could take -- it would usually take just</p> <p>11 around 12 hours because that's -- I'd usually start</p> <p>12 around six and end around six as well.</p> <p>13 BY MR. CUMMINGS:</p> <p>14 Q. I see. How long did -- you said depending on the</p> <p>15 route. Did you drive a number of different routes up</p> <p>16 north?</p> <p>17 A. I drove -- I would usually have -- they were usually</p> <p>18 rather similar, but there was three distinct routes.</p> <p>19 Q. How often did you drive each of these three different</p> <p>20 routes?</p> <p>21 A. Every week.</p> <p>22 Q. So you drove three times? You made three routes every</p> <p>23 week?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And what were the -- maybe for each route</p>	<p style="text-align: right;">Page 17</p> <p>1 your -- on the first day, on the Tuesday?</p> <p>2 A. Very inconsistently. It depends on how many stops</p> <p>3 they would have and where the stops would be so</p> <p>4 it's -- I can't give like a clear answer on that.</p> <p>5 It's very imprecise.</p> <p>6 Q. Be fair to say that sometimes you could complete all</p> <p>7 the stops on the Tuesday and sometimes you would have</p> <p>8 to -- other times you would have to complete the stops</p> <p>9 on Wednesday, correct?</p> <p>10 A. I would say more often than not I would have to</p> <p>11 complete the rest of them on Wednesday.</p> <p>12 Q. Okay. And how long did it take you from the time you</p> <p>13 left your hotel to the time you completed your stops</p> <p>14 when you had to do so on Wednesday?</p> <p>15 A. So from when I left the hotel to like finish the stop</p> <p>16 before I head back to --</p> <p>17 Q. Yeah, before you head back.</p> <p>18 A. Two, three hours.</p> <p>19 Q. Okay. And how much time would it take you then after</p> <p>20 the last stop on a Wednesday to head back?</p> <p>21 A. Two and a half or three hours.</p> <p>22 Q. I see. How about -- I'll see if I'm getting it right.</p> <p>23 Is it correct you had a Friday, Saturday route? Did I</p> <p>24 hear that correctly?</p> <p>25 A. Thursday, Friday.</p>

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	Page 18		Page 20
1 Q.	Thursday, Friday, excuse me. So for the Thursday, Friday route, how long did it take you to reach your first stop?	1 A.	Yes. Yeah. When I would go back to get the empty racks unloaded, they would also scan in with my handheld.
2		2	racks unloaded, they would also scan in with my handheld.
3		3	
4 A.	Maximum four hours. Depends on which way they dispatched me, which direction they did.	4 Q.	I see. So was this -- would this occur before you handed in your paperwork?
5		5	
6 Q.	Was it further away than the Tuesday, Wednesday?	6 A.	Yeah. Yeah. I'm sorry. I think I mixed those two up. I would go to the warehouse first and then the paperwork and stuff would be brought up to the front.
7 A.	Usually, yes.	7	
8 Q.	Okay. And for the Thursday, Friday route, were you able to complete all of the stops on the first day?	8	
9		9	Oh, I see.
10 A.	No, almost never.	10 A.	Sorry. It's been a while.
11 Q.	Okay. And from the -- I guess from time -- to make it simpler, from the time you left the Plymouth facility, the time you made it to your hotel, how long would that typically be for the -- this third route?	11 Q.	Understood. Now, getting back, after you hand in your paperwork -- you hand in your paperwork. You handed back the handheld, and what did you do after that again?
12		12	
13		13	
14		14	
15 A.	It would usually be around 11 or 12 hours.	15 A.	After the handheld would be put back, I would fill out my load sheet for the following day.
16 Q.	And how much time on the following day from the time you left your hotel to the time you made it back to Plymouth, how much would that be?	17 Q.	Okay. At any time did you meet with a manager after getting back?
17		18	
18		19 A.	So they -- yes. They'd print out the load sheet for me and tell me my route for the next day.
19 A.	Six or seven hours.	20	
20 Q.	Okay.	21 Q.	I see. And getting to them when you drove your truck to the back and met with the warehouse personnel, did you do anything with the handheld at that time?
21 A.	Minimum.	22	
22 Q.	For this third route, how many stops did you make total both days?	23	
23		24 A.	Yeah. They would -- I'm not sure exactly what they did. I believe they just checked it in and confirmed
24 A.	I do not recall.	25	
25 Q.	Do you have any recollection for the second route, the		
	Page 19		Page 21
1	Tuesday, Wednesday route, how many stops you made?	1	the numbers like as they were pulling it off.
2 A.	No, I can't remember that for those routes.	2 Q.	Okay. And when you confirmed the numbers, is that something that was done with the handheld?
3 Q.	Okay. Now, getting back for all the routes, when you -- what occurred when you made it back to	3	
4	Plymouth?	4 A.	Yes.
5		5 Q.	Okay. And you mentioned the word check in. Did any of the process you do with the handheld, was that ever called checking in?
6 A.	I would -- I'd go in. I'd hand in any checks or cash into the -- I don't know what position -- I assume a clerk as well as all the -- sorry. I'm trying to recall the words. As well as all -- like all the	6	
7	receipt like papers that I had printed out from all the drop-offs. They'd check through. They'd check in	7	
8	my handheld device and then I'd be -- I'd fill out my	8 A.	I believe so, yeah. Or checking out. I can't recall which --
9	load sheet for the next day and then I'd take the	9	
10	truck back to the back and get all the empties	10 Q.	Okay. Now, you mentioned that -- earlier that you had driven back to the back after you had turned in your load sheet. Is that still correct or were you mixing up your sequence?
11	unloaded, fill up my gas while I'm there and then park	11	
12	my truck and then head up to the front and clock out	12	
13	and be done for the day.	13	
14		14 A.	Yeah. I mixed up. The office would be after I got -- sorry. I'd go to the office after fueling up and getting checked out in the warehouse and then parking my truck and then I do the office stuff.
15		15	
16		16	
17		17	
18 Q.	So is it correct then you would hand in the paperwork from the route and hand in your handheld prior to taking the truck to the back of the facility?	18 Q.	Fueling your truck, when did you do that along the sequence?
19		19	
20		20 A.	On my way to the warehouse. You have to pass by the gas pump while you're going to the warehouse.
21 A.	I would, yes.	21	
22 Q.	At any time -- when you came back from your routes, did you meet with warehouse facilities to confirm the inventory you still had on your truck or the empties you still had on your truck when you got back?	22 Q.	Okay. Was your truck a diesel truck?
23		23 A.	Yes, mine was.
24		24 Q.	And so you did the fueling before you met with the warehouse personnel to confirm the inventory on the
25		25	

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1 truck, is that correct?	1 A. Joe and Mike.
2 A. Yes.	2 Q. Do you know recall Joe's name or Mike's name?
3 Q. So returning back to the load sheet then, is there	3 A. I don't remember their last names, no.
4 anything you did after handing in the load sheet?	4 Q. The page before this actually is an e-mail. I'll blow
5 A. I think after that I'd just clock out.	5 it up a little bit so you can see it. I see there's a
6 Q. How did you hand in your load sheet?	6 name. It's an e-mail from a none@absopure to a
7 A. I'd give it to -- I don't know what they'd be referred	7 Michael McWhinnie. Do you recall if that was the name
8 to, one of the office employees. I'd hand it to them	8 of the manager?
9 and that was it.	9 A. Yes.
10 Q. Okay. Was your -- do you happen to know whether or	10 Q. And are you aware of any -- have you ever seen an
11 not your load sheet was scanned in with a scanner	11 e-mail like this from an address called
12 at --	12 none@absopure.com?
13 A. I don't recall.	13 A. Not that I recall, no.
14 Q. Okay. I'm going to put up a document and I'll	14 Q. Okay. However, truck -- is it correct, though, that
15 probably send it around as an exhibit. Please give me	15 truck 422 was your truck?
16 a second here. I'll put it on the screen in a minute	16 A. For the -- yeah. That was my usual truck.
17 so just be patient. And I'm going to ask you whether	17 Q. And just to confirm, the date on this e-mail,
18 or not you've seen it, but give me a minute and I'll	18 April 11, 2022, that was during your employment period
19 put it up on the screen.	19 with Absopure, correct?
20 MR. CUMMINGS: I will state for the record	20 A. Yes.
21 this is a series of documents, the whole document.	21 Q. Okay. And do you recall -- can you recall typical
22 This is only one page of it, but the whole document	22 times or range of times that you normally completed
23 has been produced in the case and bears the Bates	23 your load sheet for the day?
24 numbers 5489 to 5530.	24 A. That I complete my load sheet?
25 BY MR. CUMMINGS:	25 Q. Yeah. On the days you returned, I know some days you
Page 23	Page 25
1 Q. Mr. Pemberton, do you recognize this document?	1 didn't return, but on the days you returned, is there
2 A. Yes.	2 a typical time or typical times that you can recall?
3 Q. And what is it?	3 A. For the overnight shifts, yes. It was around three or
4 A. This is the load sheet.	4 4:00. For the Monday shift it was around 6:00 I
5 Q. Okay. And so that is your name on it?	5 think.
6 A. Yes.	6 Q. Three or 4:00 you said for the Monday shift?
7 Q. Okay. And the handwriting that's on the document, is	7 A. No, for the overnight shifts, the Wednesday and
8 that something that you would have filled out?	8 Friday.
9 A. Yes. It's usually something that I fill out.	9 Q. I see. I understand. Okay. So I'm going to scroll
10 Q. Okay. And just a couple of things. It says route	10 to this. It looks -- according to this, Monday,
11 11007 northeast. Does that number sound familiar?	11 April 11. April 11 was in fact a Monday and so that
12 A. It doesn't ring any bells.	12 on Monday if this is accurate, then that was your
13 Q. Okay. And also gives a truck number that's	13 single day route, correct?
14 handwritten in. It says 422. Does that ring any	14 A. Yes.
15 bells? Do you recall that at all?	15 Q. I'm going to scroll down. There's another e-mail.
16 A. Yes. That was my usual truck.	16 This says Wednesday again with Michael McWhinnie and
17 Q. Okay. I notice that a truck number that appears to be	17 truck 422. I'm going to go down to that load sheet.
18 1111 was crossed out. Did you ever drive a truck with	18 I can make it bigger or smaller as you prefer or
19 the number 1111?	19 scroll through it. Do you recognize this document I'm
20 A. No.	20 showing now, which, for the record, is Bates number
21 Q. Okay. And I'm going to scroll through some pages	21 5492?
22 here. Now, may I ask, do you recall at the time who	22 A. Yeah, it looks like a load sheet as well.
23 were -- who was the manager or the managers that you	23 Q. I notice that this is for -- it looks like it's for a
24 worked with in the -- when you returned your truck for	24 different day of the week than the other load sheet,
25 day?	25 but it gives the same route 11007 northeast. Do you

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1	recall if all the different routes that you drove, the	1	there. There's usually also the five gallon spring on
2	three different routes, did they have a common name or	2	that route as well.
3	number that you recall?	3	Q. It's something often taken that was not on this
4	A. I don't recall, no.	4	particular load sheet. Is that what you're saying?
5	Q. Okay. And scroll through -- there's several, maybe 20	5	A. Yes.
6	of them total here. The next one coming down is	6	Q. And I noticed none of these particular load sheets
7	dated -- now I want -- according to this e-mail --	7	listed any coffee products that I can see, is that
8	I'll scroll back up. It says -- the e-mail in front	8	correct?
9	of it says Wednesday, April 13th, but the load sheet	9	A. Correct.
10	that's next to it, and I'm not making any	10	Q. Did you ever take any coffee products on your route?
11	associations, says -- has a date on it for April 14th.	11	A. On this route, I don't recall ever having done that on
12	In general the load sheet -- my question is in general	12	this route.
13	for the load sheets that you filled out, would the	13	Q. The Thursday -- this is the Thursday, Friday route,
14	date on the load sheet reflect the following date that	14	correct?
15	you'd be going on your route or the same --	15	A. On any of the up north routes, the overnights.
16	A. I believe that's what it is, yes.	16	Q. Did you ever run other routes than the up north
17	Q. And were there significant different -- what	17	routes?
18	products typically let's say that you took typically	18	A. A few times, yes.
19	on your Monday route?	19	Q. And what were those routes?
20	A. Monday would usually be distilled spring and Primo	20	A. I don't recall. I can't remember the cities that they
21	would be the main ones.	21	were in.
22	Q. And these are water products?	22	Q. And did you drive different trucks when you were on
23	A. Yeah, the five-gallon water bottles.	23	those routes?
24	Q. And I'm going to go back up to the first load sheet	24	A. Not specifically if I was on those routes.
25	that we talked about, which, for the record again, is	25	Q. Do you have any recollection of how often you ran the
	Page 27		Page 29
1	5490, and this reflects the type of products that you	1	other routes other than the up north routes?
2	would take on your Monday route?	2	A. Not very often. I can't put a number to it. It was
3	A. Yes. And the last two were not always there.	3	not very frequent.
4	Q. Okay. The last two meaning -- it says Abso premium	4	Q. Okay. Very good. We'll stop sharing this document.
5	16.9 ounce, 24 count and glass bottles were not always	5	When you were working for Absopure, how
6	there, is that correct?	6	were you paid? Excuse me. I'm going to rephrase the
7	A. Yes, correct.	7	question. Forgive me. How was your pay calculated
8	Q. Going down to the next load sheet, for the record this	8	when worked for Absopure?
9	is Bates numbers 5492, are these the type of products	9	A. I believe it was like a flat rate per day and then we
10	that -- shown on this log that you typically took with	10	earned some -- we earned an amount for every bottle we
11	you on your Tuesday, Wednesday routes?	11	delivered.
12	A. Similar to the last one, only the first -- those first	12	Q. Okay. And what was that amount that you earned for
13	four, the Absopure distilled, five gallon, Absopure	13	every bottle that you delivered?
14	spring five gallon, Primo drinking five gallon and the	14	A. I do not recall.
15	Absopure drink five gallon are the only ones that were	15	Q. Okay. And you do have -- now, do you recall what your
16	consistently there.	16	flat rate was for the day?
17	Q. The other ones were sometimes?	17	A. I do not recall, no.
18	A. Yes.	18	Q. Okay. Give me a minute. I'm going to put another
19	Q. And going down to the next load sheet here, and	19	document --
20	I'll -- for the record it is Bates number 5494, again,	20	MR. CUMMINGS: By the way, court reporter,
21	it has a list of products. Is this list of products	21	that last document that I just put up, could you enter
22	typical for your Thursday, Friday -- your third route	22	that as Exhibit 1. I will e-mail it to you when we're
23	of the week?	23	done here.
24	A. Similar to the last -- similar to the last ones,	24	REMOTELY INTRODUCED:
25	distilled and the two drinking waters are usually	25	DEPOSITION EXHIBIT 1

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<p style="text-align: right;">Page 30</p> <p>1                   2:40 p.m.</p> <p>2 BY MR. CUMMINGS:</p> <p>3 Q. Give me a minute and I will get to another document.</p> <p>4 Can you see this document on the screen?</p> <p>5 A. Kind of, yeah.</p> <p>6 Q. Okay. It's kind of a long, wide document. I'll blow</p> <p>7 it up and we'll show the left half of it at the moment</p> <p>8 if that's okay. Now, for the record here, I am -- the</p> <p>9 document -- this is one page of a document bearing</p> <p>10 Bates numbers 4936 through 4945. This particular</p> <p>11 sheet, I will scroll down here, it bears the Bates</p> <p>12 number 4936. And can you see the words and numbers on</p> <p>13 this portion of the document?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I'm going to scroll over to the right so we get</p> <p>16 the whole thing here since it's blown up. I'll scroll</p> <p>17 it back down. Have you seen this document before?</p> <p>18 A. I don't recall.</p> <p>19 Q. Okay. Have you ever heard of a document or piece of</p> <p>20 paper called a commission sheet?</p> <p>21 A. Not that I recall, no, not by that name.</p> <p>22 Q. Did you ever receive any kind of document showing how</p> <p>23 much money that you made in addition to your flat rate</p> <p>24 for the day?</p> <p>25 A. I don't remember. I apologize.</p>	<p style="text-align: right;">Page 32</p> <p>1 there anything from that point forward that would make</p> <p>2 your time longer until you finally left for the day?</p> <p>3 A. Then no. If it's after that, then no. Nothing would</p> <p>4 really make it longer.</p> <p>5 Q. And do you recall if you received any kind of</p> <p>6 compensation that was called a bonus?</p> <p>7 A. I don't recall.</p> <p>8 Q. Okay. And do you recall if you received any</p> <p>9 compensation for installing or removing water coolers?</p> <p>10 A. I don't believe I ever got a bonus for that, no.</p> <p>11 Q. Okay. Really that's all the questions I have.</p> <p>12 MR. FRISCH: Okay. I just have a few</p> <p>13 follow-up questions.</p> <p>14 EXAMINATION</p> <p>15 BY MR. FRISCH:</p> <p>16 Q. Mr. Pemberton, did you ever drive a van when you were</p> <p>17 doing your deliveries?</p> <p>18 A. I did a few times, yes.</p> <p>19 Q. Okay. And that would have been a van weighing less</p> <p>20 than 10,000 pounds?</p> <p>21 A. I believe so, yeah. That's a Sprinter van I believe,</p> <p>22 yeah.</p> <p>23 Q. When you did drive such a vehicle, did you drive it</p> <p>24 for the entire day as you were doing your route or if</p> <p>25 it was an overnight route I guess two days?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. That's fine. That's actually -- I'm very glad</p> <p>2 you say if you can remember or not. It's much better</p> <p>3 than trying to guess or speculate. Okay. We can stop</p> <p>4 sharing that document at the moment.</p> <p>5 Getting back to -- forgive me if I've</p> <p>6 already asked this, but my own notes aren't clear.</p> <p>7 When you arrived back at the facility after any of</p> <p>8 your routes during the week, from the time that you</p> <p>9 went back you confirmed you met -- stop me if I'm</p> <p>10 putting words in your mouth, but from the time you</p> <p>11 met -- brought the car back, you met with warehouse</p> <p>12 personnel and confirmed on the handheld the inventory</p> <p>13 and empties you had on your truck, from that point</p> <p>14 until the time you left for the day, you filled out</p> <p>15 your load sheet and left for the day, how long did</p> <p>16 that process typically take you?</p> <p>17 A. Around 30 minutes.</p> <p>18 Q. Did it sometimes take longer?</p> <p>19 A. It did sometimes take longer, yes.</p> <p>20 Q. Were there any factors that would make it take longer?</p> <p>21 A. Yes. If warehouse personnel were unavailable or if</p> <p>22 they were just taking longer.</p> <p>23 Q. By taking longer, I'm talking from the time that you</p> <p>24 met with the warehouse personnel and confirmed on the</p> <p>25 handheld the inventory. From that point forward, was</p>	<p style="text-align: right;">Page 33</p> <p>1 A. I believe so, yeah.</p> <p>2 Q. You said earlier when defense counsel asked you</p> <p>3 about -- a question about what you understood the case</p> <p>4 to be about, you said it was about overtime</p> <p>5 compensation, right?</p> <p>6 A. Yeah.</p> <p>7 Q. And this -- is it your understanding that you were</p> <p>8 never paid overtime during the period of time you were</p> <p>9 employed by Absopure despite the fact you worked over</p> <p>10 40 hours a week?</p> <p>11 A. That is my understanding, yes.</p> <p>12 MR. CUMMINGS: Objection.</p> <p>13 BY MR. FRISCH:</p> <p>14 Q. Is that what -- so you believe that you have unpaid</p> <p>15 overtime compensation you're seeking in this case?</p> <p>16 A. Could you repeat the question.</p> <p>17 Q. Is it your understanding that you're seeking unpaid</p> <p>18 overtime compensation in this case?</p> <p>19 A. Yes.</p> <p>20 Q. I have nothing further.</p> <p>21 MR. CUMMINGS: I just have a couple</p> <p>22 questions based on that.</p> <p>23 RE-EXAMINATION</p> <p>24 BY MR. CUMMINGS:</p> <p>25 Q. Did you ever drive a Sprinter van on your overnight</p>

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1 routes?	1 JUSTIN GUY, individually and
2 A. On the overnight route, no.	2 on behalf of those similarly
3 Q. Did you ever drive a Sprinter van on your Monday	3 situated,
4 route?	4 Plaintiff,
5 A. On my -- no. My normal Monday route, no.	5 vs. Case No. 20-cv-12734-MAG-EAS
6 Q. Under what circumstances would -- did you drive the	6 Hon. Mark A. Goldsmith
7 Sprinter van?	7 ABSOPURE WATER COMPANY, LLC,
8 A. In the cases where I was doing someone else's route,	8 a domestic limited liability
9 when they would have me do another employee's route.	9 company,
10 Q. I see. Would that -- doing that route be in place of	10 Defendant.
11 doing one of your normal up north routes?	11 _____
12 A. Yes.	12 VERIFICATION OF DEPONENT
13 Q. Did you ever use that van on a weekend day, like on a	13
14 Saturday?	14 I, having read the foregoing examination
15 A. I don't think so, no.	15 under oath consisting of my testimony at the
16 MR. CUMMINGS: Okay. I'm done with the	16 aforementioned time and place, subject to the changes
17 questions.	17 in the attached errata sheet, do hereby attest to the
18 MR. FRISCH: I have no further follow-up.	18 correctness and truthfulness of the transcript.
19 He'll read and also the one this morning, we didn't	19
20 talk about whether he would read or waive, both of	20
21 them would like to read their depositions.	21
22 MR. CUMMINGS: No objection.	22
23 MR. FRISCH: You can send us the transcript	23
24 and then we'll get it to them.	24 TERRY PEMBERTON
25 (Deposition concluded at 2:48 p.m.	25 Dated:
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1 Signature of the witness was requested.	1 ERRATA SHEET
2	2 PAGE LINE READS
3	3 PAGE LINE SHOULD READ
4	4
5	5
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CERTIFICATE OF NOTARY

1 STATE OF MICHIGAN }

2 ) SS

3 COUNTY OF WAYNE )

4

5  
6 I, HELEN F. BENHART, certify that this  
7 deposition was taken remotely before me on the date  
8 hereinbefore set forth; that the foregoing questions  
9 and answers were recorded by me stenographically and  
10 reduced to computer transcription; that this is a  
11 true, full and correct transcript of my stenographic  
12 notes so taken; and that I am not related to, nor of  
13 counsel to, either party nor interested in the event  
14 of this cause.

15

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21



22 HELEN F. BENHART, CSR-2614  
23 Notary Public,  
24 Wayne County, Michigan.

25 My Commission expires: 7/7/2027